the charging party petitioned for review. The Court of Appeals for the Third Circuit granted the petition, set aside the settlement, and ordered the Board to conduct a hearing, stating:

> "Our best judgment is that the charging party, after compaint is issued, does have some standing. The Board may refuse to do anything about his complaint as already indicated. But once it does, and once it goes to the extent of filing a complaint, then we think that he is entitled to have a chance to be heard as the Administrative Procedure Act requires. He has a right to object if after hearing he does not like the result. But he certainly has nothing on which to base his objections unless there is a hearing and a record is made so that the court has something to go on.
>
> "In other words, we conclude that the petitioners are right in this case; that they are entitled to a hearing to present whatever facts they can find to support their position. *And if they believe the Board to be wrong after it makes an order they can get court review both on the questions of fact and on the questions of law.*" (Emphasis supplied)

The only difference between the instant case and *Marine Engineers' Beneficial Association* vs. *NLRB*, supra, is that here the Board has made its decision not to pursue the case after, rather than before, the case reached the Court of Appeals. This is not a signficant difference for in both situations the Board is attempting to sacrifice the rights of a charging party without its consent—the very thing which *Marine Engineers' Beneficial Association* vs. *NLRB*, supra, held it was not free to do.

The certiorari statute, 28 U. S. C. Section 1254(1), does not preclude the filing of the instant petition. The statute states only that "any party" may file a petition and NMU

certainly has been a party to this proceeding from its inception, even though it was not permitted to participate before the Court of Appeals. That the charging party has standing to pursue judicial review further appears from the fact that if the Board should decide a case adversely to the charging party, then the latter has the right as a "party aggrieved" to petition for review, and to thereafter seek a writ of certiorari. See 29 U. S. C. §160(f). There is no reason for it to have any lesser rights merely because it was successful before the Board. We submit that the charging party has an important interest in the litigation which Congress recognized when it gave it the standing to seek judicial review from an adverse decision by the Board. This same policy would require that it be given the right to petition for review of an adverse decision by the Court of Appeals.

In its Brief in Opposition, respondent refers in very general terms, to decisions holding that the primary responsibility for reviewing decisions of the National Labor Relations Board lies in the various Courts of Appeals, and then merely states that in the instant case the lower court "patently considered each facet of the evidence and made a fair assessment thereof." However, nowhere in respondent's brief is there any reference to portions of the record which would support the lower court's findings. Certainly if there was any such support in the record, respondent would have referred to it rather than resting on a general statement that court considered the evidence. Even the most cursory review of the record in the instant case discloses that the Court of Appeals so completely misconceived its function in reviewing a decision of the Board as to warrant attention by this Court. See *NLRB* vs. *Walton Mfg. Co.*, 369 U. S. 404 (1962).

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully,

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